

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-562-2022 (O&M)
Decided on : 27.04.2022**

Hardeep Singh

... Appellant(s)

Versus

Sharanjit Kaur

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Satbir Rathore, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

This is the Regular Second Appeal against the concurrent findings recorded by both the Courts below. The learned First Appellate Court vide judgment and decree dated 02.11.2021 upheld the judgment & decree dated 12.11.2018, passed by the Civil Judge (Sr. Divn.), Gurdaspur, whereby, the suit filed by the respondent/plaintiff for possession as owner by way of specific performance of Agreement of Sale dated 09.09.2013 executed by the defendant in favour of the plaintiff for the sale of a plot and two shops in an area measuring 0-9 Marlas with 5½ feet karam out of the land measuring 0-16 Marlas comprised in Khewat No. 238, Khatauni No. 340, Khasra No. 247 (0-16), as entered in the Jamabandi for the year 2019-10 against the appellant/defendant was decreed with costs.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

The case as set up by the respondent/plaintiff before the Civil Court was that the appellant/defendant being owner in possession of the suit property detailed in the preceding paragraph, agreed to enter into an

agreement to sell with the plaintiff for a sale consideration of Rs. 3,60,000/- vide agreement to sell, dated 09.09.2013. At the time of execution of the agreement to sell dated 09.09.2013, the plaintiff handed-over Rs.1,20,000/- as earnest money to the defendant in the presence of the marginal witnesses. The defendant agreed to execute and register the sale-deed on receipt of the balance sale consideration in favour of the plaintiff on 09.05.2014, as per the terms & conditions of the agreement to sell dated 09.09.2013. The plaintiff was always ready and willing to perform her part of the contract i.e. to get the sale-deed executed and registered from the defendant as per the terms of the agreement to sell dated 09.09.2013, however, it was the defendant who had been putting off the execution of the agreement to sell on some pretext or the other. On 09.05.2014 i.e. the date fixed for the execution and registration of the sale-deed, the plaintiff along with the balance sale consideration and other expenses, which were to be incurred for the execution and registration of the sale-deed came to the office of Sub-Registrar Gurdaspur. The plaintiff waited from 09:00 A.M. to 05:00 P.M. in the office of Sub-Registrar Gurdaspur. Since the defendant failed to turn up, the plaintiff got her presence marked by way of an affidavit in the office of the Sub-Registrar, Gurdaspur. The defendant thus violated the terms & conditions of the agreement to sell intentionally and wilfully, as a result, on 22.05.2014, the plaintiff served a legal notice upon the defendant to execute and register the sale-deed in her favour on 06.06.2014. Though the legal notice was received and duly acknowledged by the defendant, however, on 06.06.2014, yet again, the plaintiff kept waiting for the defendant to turn up for the execution and registration of the sale-deed, however, in vain. The plaintiff again got her presence marked by way of an affidavit in the office

of Sub-Registrar Gurdaspur. Thereafter, the defendant was asked many times by the plaintiff to execute the sale-deed in her favour as per the terms & conditions of the agreement to sell. Since the defendant intentionally and wilfully violated the terms & conditions and did not perform his part of the contract, the suit in question came to be instituted.

On being put to notice, the defendant appeared and filed his written statement. It was submitted that the father-in-law of the plaintiff and others wanted to illegally grab the suit property. The father of the defendant had filed a suit earlier in time, which was decreed in favour of his father namely Harbans Singh. Ever since then, the plaintiff and her family had been eyeing the suit property. It was also alleged that the agreement to sell dated 09.09.2013 was a forged and fabricated document.

On the basis of evidence and other material on record, the Courts below decreed the suit of the plaintiff with costs for specific performance of the agreement to sell dated 09.09.2013 of the suit property. The plaintiff was directed to deposit the remaining sale consideration within two months from the date of judgment and decree and the defendant was held liable to execute the sale-deed within a period of one month from the date of such deposit, failing which, the plaintiff would be held entitled to get the sale-deed executed through the process of the Court.

Learned counsel for the appellant/defendant while impugning the concurrent findings recorded by the Courts below, submits that the plaintiff had miserably failed to prove her readiness and willingness to execute the sale-deed by way of any cogent and convincing evidence. Learned counsel reiterated the stand taken by the appellant/plaintiff before the Courts below and yet again submitted that the agreement to sell dated

09.09.2013 was a result of fraud and fabrication and in fact, no earnest money as alleged by the plaintiff was ever handed-over to or received by, the defendant. Learned counsel submits in the circumstances, since the execution of the above-said agreement to sell by the defendant has not been duly proved before the trial Court and hence no decree for specific performance could have been passed against him.

I have heard learned counsel for the appellant(s) and perused the material on record.

The onus of proving the execution of agreement to sell was on the plaintiff. In order to prove the execution of the agreement to sell dated 09.09.2013, the plaintiff examined the marginal witness to the agreement to sell i.e. PW-2 Surjit Singh. Besides this, the plaintiff also examined PW-3 Vijay Guleria, who scribed the the agreement to sell. While stepping into the witness-box, both of these witnesses duly proved the execution of the agreement to sell, dated 09.09.2013 and nothing adverse came to the fore during their cross-examination. No doubt, the defendant alleged that the agreement to sell was a result of fraud and fabrication, however, he miserably failed to substantiate his plea of fraud and fabrication of the agreement to sell by way of any cogent evidence inasmuch as except for his bald assertion, the defendant did not place any material on record nor even examined any handwriting expert in support of his submissions.

The defendant, no doubt, asserted that since the father of the defendant had instituted a civil suit against the father-in-law of the plaintiff, which was decreed in favour of the father of the defendant and ever since then the plaintiff and her family had been eying the suit property, however, no judgment or order was produced by the defendant in support of his

submissions. The readiness and willingness of a party to execute the contract being a matter of fact can be inferred from the conduct of the parties. The submissions made by the learned counsel that the defendant/plaintiff had miserably failed to show her readiness and willingness to execute the sale-deed by any cogent and convincing material, thus is devoid of any merit and deserves to be rejected.

As per the terms & conditions of the agreement to sell, the date fixed for execution of the sale-deed was 09.05.2014. The plaintiff went to the office of Sub-Registrar, Gurdaspur, along with balance sale consideration. The factum of the plaintiff going to the office of Sub-Registrar, Gurdaspur, stands corroborated by Ex.P2, which is an affidavit duly attested by the Executive Magistrate showing her presence. Since the defendant failed to turn up on 09.05.2014, the plaintiff served him with a legal notice (Ex.P3), asking him to come to the office of Sub-Registrar, Gurdaspur for the execution and registration of the sale-deed on 06.06.2014. Since the defendant yet again did not turn up for the execution and registration of the sale-deed on the given date, the plaintiff got her presence marked in the office of Sub-Registrar, Gurdaspur vide her affidavit dated 06.06.2014 (Ex.P4). The defendant failed to give any cogent reason during his deposition before the trial Court *qua* his non-appearance on 09.05.2014 and 06.06.2014 before the Sub-Registrar, Gurdaspur. From the conduct of the respondent/plaintiff, it is discernible rather it leaves no manner of doubt that she was always ready and willing to get the sale-deed executed.

Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions so arrived at by the Courts below were either contrary to the

record or suffered from any material illegality. Still further, no question of law, much less, substantial question of law arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

April 27, 2022
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*